

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	8:04CR385
)	
vs.)	CORRECTED¹
)	
ISIDRO CARDENAS-OCHOA,)	REPORT AND
)	RECOMMENDATION
)	
Defendant.)	

On April 18, 2005, defendant Isidro Cardenas-Ochoa (Cardenas-Ochoa), together with his counsel, Donald L. Schense, appeared before the undersigned magistrate judge. Ms. Irene Tomassini, a certified interpreter in the Spanish language, served as the interpreter by remote telephone hook-up. Cardenas-Ochoa was advised of the charges, the penalties and the right to appear before a United States District Judge. After orally consenting to proceed before a magistrate judge, Cardenas-Ochoa entered a plea of guilty to Count II of the Superseding Indictment.

After being sworn, Cardenas-Ochoa was orally examined by the undersigned magistrate judge in open court as required by Federal Rule of Criminal Procedure 11. Cardenas-Ochoa also was given the advice required by that Rule. Finally, Cardenas-Ochoa was given a full opportunity to address the court and ask questions.

Counsel for the government and counsel for Cardenas-Ochoa were given the opportunity to suggest additional questions by the court. Moreover, both counsel orally certified that they were of the opinion that the plea was knowing, intelligent and voluntary, and that there was a factual basis for Cardenas-Ochoa's plea of guilty to Count II of the Superseding Indictment.

Therefore, I find and conclude that: (1) the plea of Guilty to Count II of the Superseding Indictment is knowing, intelligent, and voluntary; (2) there is a factual basis for the plea; (3) the

¹ A clerical error was made to the count to which the defendant plead. The defendant plead to Count II of the Superseding Indictment.

provisions of Rule 11 and any other provisions of the law governing the submission of guilty pleas have been complied with; (4) a petition to enter a plea of guilty, on a form approved by the court, was completed by Cardenas-Ochoa, Cardenas-Ochoa's counsel and counsel for the government, and such petition was placed in the court file; (5) the plea agreement is in writing and is filed in the court file; (6) there were no agreements or stipulations other than those contained in the written plea agreement.

IT IS RECOMMENDED TO JUDGE LAURIE SMITH CAMP that:

1. She accept the guilty plea and find the defendant, Isidro Cardenas-Ochoa guilty of the crime set forth in Count II of the Superseding Indictment to which Cardenas-Ochoa tendered a guilty plea;

2. She not accept the plea agreement at this time as it contains an agreement under Fed. R. Crim. P. 11(c)(1)(C), but rather she consider the Rule 11(c)(1)(C) agreement at time of sentencing.

ADMONITION

Pursuant to NELR 72.4 any objection to this Report and Recommendations shall be filed with the Clerk of the Court within ten (10) days after being served with a copy of this Report and Recommendation. Failure to timely object may constitute a waiver of any such objection. The brief in support of any objection shall be filed at the time of filing such objection. Failure to file a brief in support of any objection may be deemed an abandonment of the objection.

DATED this 20th day of April, 2005.

BY THE COURT:

s/Thomas D. Thalken
United States Magistrate Judge